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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

INDEX NEWSPAPERS LLC, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

CITY OF PORTLAND, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

DECLARATION OF ATHUL K. ACHARYA IN SUPPORT OF PLAINTIFFS' RESPONSE RE: MARKING FEDERAL DEFENDANTS' UNIFORMS

ACHARYA DECLARATION IN SUPPORT OF PLAINTIFFS' RESPONSE RE: MARKING FEDERAL DEFENDANTS' UNIFORMS

I, Athul K. Acharya, declare:

1. I am an attorney at BraunHagey & Borden LLP and counsel of record for Plaintiffs. I base this declaration on facts within my personal knowledge and if called upon to testify, I could and would testify competently thereto.

2. Attached hereto as **Exhibit 1** is a true and correct copy of an email exchange between counsel for Plaintiffs and counsel for Defendants U.S. Marshals Service and U.S. Department of Homeland Security, dated September 10, 2020.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: September 10, 2020



Athul K. Acharya

EXHIBIT 1

From: [Von Bokern, Jordan L. \(CIV\)](#)
To: [Athul Acharya](#); [Hall, Jeffrey A. \(CIV\)](#)
Cc: [Gunnar Martz](#); [Matt Borden](#)
Subject: RE: Meet-and-confer on uniform markings - Index Newspapers LLC v. City of Portland, 3:20-cv-1035-SI (D. Or.)
Date: Thursday, September 10, 2020 11:57:54 AM

Athul,

Under the terms of the Court's preliminary injunction, the appropriate venue for the parties to respond to one another's submitted proposals is by filing a response with the Court. Slip Op. (ECF No. 157) at 60–61. It sounds as though you intend to file such a response today, and we look forward to reviewing that response. There is no requirement that the parties confer further prior to filing those responses. As the parties have already laid out their existing proposals in detail and have been ordered to file a response on the docket, I do not believe that conferring further on those already-presented proposals would be appropriate. But if you believe you have a potentially acceptable alternative proposal to the one put forward in your submission (ECF No. 165), I would be glad to meet and confer over it, but I would need to see the proposal in writing first.

Best,
Jordan

Jordan L. Von Bokern

Trial Attorney
United States Department of Justice
Civil Division - Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Jordan.L.Von.Bokern2@usdoj.gov

From: Athul Acharya <acharya@braunhagey.com>
Sent: Thursday, September 10, 2020 1:42 PM
To: Von Bokern, Jordan L. (CIV) <jvonboke@CIV.USDOJ.GOV>; Hall, Jeffrey A. (CIV) <jhall@CIV.USDOJ.GOV>
Cc: Gunnar Martz <Martz@braunhagey.com>; Matt Borden <borden@braunhagey.com>
Subject: RE: Meet-and-confer on uniform markings - Index Newspapers LLC v. City of Portland, 3:20-cv-1035-SI (D. Or.)

Jordan,

We have reviewed the federal agents' proposals for adding identifying markings to their uniforms. We do not believe they will serve the Court's stated purpose of making the agents "identifi[able] at a reasonable distance." Most of the proposals suggest an identifying placard two inches high. (Dkt. 162-3 ¶ 10; Dkt. 162-4 ¶ 15.) According to widely available visibility calculators (such as [this one](#)), the maximum distance at which 2" lettering is easily readable is 20 feet. That is plainly insufficient to identify an agent at the range of the weapons they use. Even CBP SOG-1's suggestion, which may allow for identifiers as large as 4", would be readable only as far as 40 feet away. The federal agents' additional suggestions all involve identifiers placed on the side of back, where they will not be visible

to a journalist or legal observer the agent is targeting. For these reasons, we do not believe the federal agents' proposals are viable.

Nor have the federal agents explained why Plaintiffs' proposals are not viable. An expanded set of such proposals, encompassing nearly every image of a uniformed agent submitted to the court, is available in Dkt. 165 at 3-16. They show that there are multiple large areas available on officers' uniforms—often already bearing Velcro patches with non-identifying words like "POLICE." Such areas can be repurposed, and other areas can have Velcro patches added without incurring any of the downsides the federal agents identified, such as flammability. Based on these obvious options, it does not appear that the federal agents have tried to exhaust all feasible options for creating a visible numbering system, as the Court ordered, and instead have renewed rejected objections and proposed exclusively non-viable options.

We'd like to discuss these issues before our supplemental filing today. Please let us know if you're available this afternoon.

Best,
Athul

Athul K. Acharya

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